South Coast Hospice, Inc. *and* International Longshore and Warehouse Union, Local 5. Case 36–RC–6015

January 31, 2001

DECISION, DIRECTION, AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND WALSH

The National Labor Relations Board, by a three-member panel, has considered determinative challenges in an election held August 3, 2000, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 14 for and 11 against the Petitioner, with 8 determinative challenged ballots.[1]

The Board has reviewed the record in light of the exceptions[2] and briefs and has adopted the hearing officer's findings and recommendations,[3] except for the hearing officer's recommendation that the Petitioner's challenge to the ballot of Dr. Dallas Carter be sustained.

Dr. Dallas Carter has the title "medical director." The Employer argues in its exceptions that Carter must be included in the bargaining unit and the challenge to his ballot overruled because the Stipulated Election Agreement explicitly includes the classification of "medical director" in the bargaining unit description.[4] The Petitioner responds in its answering brief that the Employer failed to raise this argument at the hearing. The Petitioner further asserts that had the Employer raised this argument, the Petitioner would have adduced evidence at the hearing to show that its potential challenge to Carter's ballot was an "express condition" of its agreement to the stipulated unit description and "[the Employer] knew it, and the Region knew it before approving the agreement."

We find that, even assuming the truth of the Petitioner's assertions, the challenge to Carter's ballot should be overruled. In *Laidlaw Transit, Inc.*, 322 NLRB 895 (1997), the Board explained:

> It is well-settled Board policy that a Stipulated Election Agreement is a binding contract to which the parties will be held, and that if the unit description of that agreement is expressed in clear and unambiguous terms, the Board will not examine extrinsic evidence to determine the parties' intent regarding bargaining unit composition.

The unit stipulation in this proceeding is clear and unambiguous on its face: it explicitly includes the classification of medical director. Further, there is only one person in that classification, Dr. Carter. Because the unit description is unambiguous, there is no need to resort to extrinsic evidence to determine the parties' intent. Thus, even if the Petitioner had produced evidence that its agreement with the Stipulation was conditioned on its ability to challenge Carter's ballot, that evidence would be insufficient under *Laidlaw* to nullify the Petitioner's subsequent signing of the Stipulation to the contrary. The Stipulated Election Agreement contains nothing which conditions or modifies the plain meaning of the stipulated unit description. We accordingly find that Dr. Dallas Carter should be included in the unit, and his vote will be opened and counted.

DIRECTION AND ORDER

IT IS DIRECTED that the Regional Director shall, within 14 days from the date of this decision, open and count the ballots of Rhonda Carver, Janet Jester, Susan Potter, Kathie Hatchitt, and Dallas Carter, prepare and cause to be served on the parties a revised tally of ballots, and issue the appropriate certification.

IT IS ORDERED that the matter is remanded to the Regional Director for further processing.

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[1] At the hearing, the Employer withdrew its challenge to the ballot of Janet Jester, and the Petitioner withdrew its challenge to the ballot of Susan Potter. We shall accordingly order that their ballots be opened and counted.

[2] In the absence of exceptions, we adopt pro forma the hearing officer's recommendation that the Petitioner's challenge to the ballot of Kathie Hatchitt be overruled. We shall accordingly order that her ballot be opened and counted.

[3] We adopt the hearing officer's recommendation that the Petitioner's challenge to the ballots of Anna Anderson, Jeff Friedman, and Linda Devereaux should be sustained because, as established in the hearing officer's report, they fail to satisfy the test for voting eligibility set forth in *Davison-Paxon Co.*, 185 NLRB 21, 24 (1970). Absent a showing of special circumstances, part-time employees who do not satisfy the *Davison-Paxon* formula are ineligible to vote. *Trump Taj Mahal Casino*, 306 NLRB 294, 295 (1992), affd. in the sum. judg. proceeding 307 NLRB No. 219 (1992) (not reported in Board volumes), enfd. 2 F.3d 35 (3d Cir. 1993). We find that the Employer has not shown special circumstances in this proceeding justifying deviation from the *Davison-Paxon* formula.

[4] The Stipulated Election Agreement sets forth the following bargaining unit description:

> UNIT A: All professional employees, including registered nurse(s), chaplain(s), medical director(s), social worker(s), and dietician(s) employed by the Employer at its Coos Bay, Oregon facilities who were employed during the payroll period ending immediately preceding July 7, 2000; but excluding all other employees, nonprofessional employees, temporary agency employees, confidential employees, guards and supervisors as defined in the Act.
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> UNIT B: All full time and regular part-time employees employed by the Employer at its Coos Bay, Oregon facilities who were employed during the payroll period ending immediately preceding July 7, 2000; but excluding all other employees, professional employees, temporary agency employees, confidential employees, guards and supervisors as defined in the Act.

A majority of ballots cast by professional employees in Unit A voted to be included with the nonprofessional employees in Unit B.